

PT 02-53

Tax Type: Property Tax

Issue: Government Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**DuPAGE HOUSING AUTHORITY
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

**Nos: 01-PT-0043
(00-22-310)
PINS: 05-16-316-004
05-16-316-009
05-16-316-010**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. John E. Howlett of Howlett & Associates on behalf of the DuPage Housing Authority (the “Applicant” or the “Authority”); Mr. Robert Rybica, Assistant State’s Attorney for the County of DuPage on behalf of the DuPage County Board of Review; Mr. Shepard Smith, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue. (the “Department”)

SYNOPSIS: This proceeding raises the limited issue of whether real estate identified by DuPage County Parcel Index Numbers 05-16-316-004, 05-16-316-009 and 05-16-316-010 (hereinafter collectively referred to as the “subject properties”) were “used for low income rent housing and related uses,” as required by Section 15-95 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*, during the 2000 assessment year. The underlying controversy arises as follows:

The Authority filed a series of Petitions for Tax Exemption with the Board, which recommended that the requested exemptions be granted. (Dept. Group Ex. No. 1). The Department, however, rejected the Board’s recommendations via three separate

determinations, dated March 8, 2001, finding that each of the three subject properties were not in exempt use. (*id.*) Applicant filed timely appeals to all of the Department's determinations and later presented evidence at a formal evidentiary hearing, at which the Board and the Department also appeared. Following a careful review of the record made at hearing, I recommend that all of the Department's initial determinations be affirmed.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position herein are established by the admission of Dept Group Ex. No. 1.
2. The Department's position in this matter is that all of the subject properties are not in exempt use. *Id.*
3. The subject properties are located Wheaton, IL and improved with a one story building. *Id.*
4. The Authority is a municipal corporation duly organized pursuant to the Housing Authorities Act, 310 **ILCS** 10/1, *et seq.* Its statutory powers include, *inter alia*, authority to provide rental assistance, low rent housing and other related services that "tend to relieve the shortage of decent, safe, affordable and sanitary dwellings." 310 **ILCS** 10/2.¹ Administrative Notice.
5. Applicant acquired ownership of each of the three subject properties by means of three separate special warranty deeds dated September 3, 1998. Dept. Group Ex. No. 1.
6. Applicant originally acquired the subject properties with the intention of using them for office space. However, after reviewing potential uses for the property, the

1. For further information about the Authority's statutory powers, *see*, 310 **ILCS** 10/2, 10/8 – 10/8.22.

Authority decided that the properties should be used to create affordable housing for seniors. Tr. pp. 13-14.

7. Applicant selected an architect for the affordable senior housing project in the fall of 1999. It then: (a) negotiated and finalized a contract with its architect; (b) pursued design development; (c) held various planning and other meetings with its architect; and, (d) obtained cost estimates for the project during 2000. Applicant Ex. Nos. 1, 2; Tr. pp.14-17, 19-23, 25-30.
8. The Authority gradually became dissatisfied with its architect. It also encountered funding problems and ultimately concluded that it was not financially feasible to continue pursuing the affordable senior housing project. Tr. pp. 39-41.

CONCLUSIONS OF LAW:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code 35 **ILCS** 200/1-3 *et seq.* (hereinafter the “Code”). The Code provisions that govern this case are found in 35 **ILCS** 200/15-95, wherein “[a]ll property of housing authorities created under the Housing Authorities Act [310 **ILCS** 10/1, *et seq.*], if the property and improvements are used for low income rent housing and related uses,” is exempted from real estate taxation. 35 **ILCS** 200/15-95.

This provision is unambiguous on its face but contains four distinctive components: first, the preposition “of” connotes an ownership requirement (*see, Methodist Old People's Home v. Korzen*, 39 Ill.2d 149 (1968)); second, the ownership requirement clearly mandates that the property must be owned by a certain type of entity,

to wit, “housing authorities created under the Housing Authorities Act [310 **ILCS** 10/1, *et seq.*];” third, the use language establishes that this exemption is based on ownership and use, rather than ownership alone; and fourth, the use language is very restrictive in that it confines application of the exemption to specific types of housing authority properties, those being the ones used for “low income rent housing and related uses.” 35 **ILCS** 200/15-95. *See also*, Krause v. Peoria Housing Authority, 370 Ill. 356 (1939).

All of the instant denials were predicated solely on lack of exempt use. Dept. Group Ex. No. 1. Therefore, only that requirement, which mandates that the subject property actually be used for “low income rent housing and related uses” during the tax year in question, (35 **ILCS** 200/15-95; Skil Corp. v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and Dev. Corp. v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994); People ex rel. Tomlin v. Illinois State Bar Ass'n, 89 Ill. App.3d 1005, 1013 (4th Dist. 1980); Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill. App.3d 542 (1st Dist. 1981); Fairview Haven v. Department of Revenue, 153 Ill. App.3d 763 (4th Dist. 1987)), is at issue herein.

Applicant clearly intended to develop the subject properties for appropriate use throughout 2000. Such adaptation and development can constitute exempt use if the properties are actually undergoing some form of physical adaptation for a specified exempt use during the tax year in question. Weslin Properties v. Department of Revenue, 157 Ill. App.3d 580 (2nd Dist. 1987). Nonetheless, actual and not intended use is decisive on the question of exempt use. Skil Corp. v. Korzen, *supra*; Comprehensive Training and Dev. Corp. v. County of Jackson, *supra*. Therefore, the mere intent to engage in such adaptation and/or development does not satisfy the statutory exempt use requirement. *Id.*

Moreover, business realities inherent in modern construction practice dictate that applicant could not have proceeded beyond mere preliminary planning unless it had first procured a level of financing that would support its ambitious project. Applicant was

unable to obtain such financing during the 2000 tax year. Consequently its prospects for engaging in an appropriate level of adaptation and development remained speculative throughout that entire period. Therefore, the Department's initial determination in this matter, finding that the subject properties were not used for purposes specified in 35 **ILCS** 200/15-95, should be affirmed.

WHEREFORE, for all the foregoing reasons, I recommend that real estate identified by DuPage County Parcel Index Numbers 05-16-316-004, 05-16-316-009 and 05-16-316-010 not be exempt from 2000 real estate taxes.

August 19, 2002

Date

Alan I. Marcus
Administrative Law Judge